The Ecological Atlas of International Law

A Chinese Reading of Three Celebrated Works in the Comparative International Law Discourse

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In an effort to "identify, analyze, and explain similarities and differences in how international law is understood, interpreted, applied, and approached by different national and international actors", comparative international law as a research area has recently received more scholarly attention, at a time when faith in international law's universality seems to be declining. In light of the dynamics of international power, especially the rise of China, "multiperspectivism" is expected to facilitate a comprehensive understanding of the environment in which international law operates. Three recent publications have contributed to this enterprise, and a Chinese reading of these celebrated works might help unravel the ecological atlas of today's international law.

Why to Compare: International law and the "Eastphalian" Challenge?

The much-discussed turn to comparative studies in international law seems to be driven by the fear of a crisis of international law that non-western actors, especially China, might have been exerting growing influences on and posing new challenges for the rules-based international legal order. Will such perceived influences and challengeslead to an "Eastphalia" international legal order? Reassurance can be found in a global and intellectual history of international law written by Arnulf Becker Lorcain *Mestizo International Law*. This book tells the story how non-Western international lawyers have approached international law: it started as "a process of faithful learning of existing law", then "shifted towards using existing rules and arguments to support their own interest" (p. 73); and "with the intention of changing existing international legal rules" (p. 17), they moved on to "use international law to resist", thus managed to transform international law (pp. 15-16). History, thus, demonstrates that such dynamics have not only transcended international law from being a European enterprise to a more universal endeavor, but also proven the resilience of the international legal system. In such a system, non-western actors (through the activities of their international lawyers) join, develop and transform the international legal system by playing the role of "positive rule-breakers" in order to contribute to the refinement of international law, rather than the one of "deal breakers" in the setting of the international rule of law. Nowadays the same dynamic pattern seems to occur. Instead of shattering the universal legal system into an "Eastphalian" moment of international law, the gradual involvement and active participation of non-western key players (evolving from a rule-taker to a rule-shaper) will likely contribute to a more universal future of international law.

Where to Look: Getting to Know Chinese International Law Academics

Based on the scholarly awareness of the necessity to see international law "through the eyes of others" (p. 320), Anthea Roberts' *Is International Law International?* has shed some light on where to look: comparing international law academics, international law textbooks and casebooks. In her book, Roberts has included a number of international law academics from Australia, China, France, Russia, the United Kingdom, and the United States at five elite law schools (Table 10, pp. 328-335). Here Roberts seems to be taking an Anglo-Saxon approach using Russell-Group or Ivy-League as the determinative factors, where the rankings of the universities are regarded more important than the standing of individual academics. However, at least in the context of China, I fear such selection is neither precise nor representative, and thus confusing for the audience, if not misleading. First, some of the academics listed are not specialized in international law but in constitutional law, environmental law, or other subjects in domestic law. Second, selecting only the five elite law schools has excluded leading international law academics who are based outside of the five. Third, such selection excludes leading academics from research institutes, for instance, the International Law Institute at Chinese Academy of Social Sciences (CASS). Such research institutes advise the government on a more regular basis and could be even more influential on China's behavior in the international law arena.

Getting to know Chinese international law academics is the first step for better mutual understanding. Following Roberts' initial efforts, two directions for further research are worth considering. First, getting to know the Advisory Committee on International Law of the Ministry of Foreign Affairs (the first Committee was established in 2015, and the second Committee started its work in 2017). The Committee has gained great achievements since its establishment by serving as the bridge between International Law practice and theory, and as a leading think tank on foreign policy for the government (see here). Advisors and members of the Committee are all established international law academics in China, but only 6 of the 16 advisors and members of the Committee have been included in Roberts' list of over 50 Chinese international law academics. Second, after identifying the "inner circle" of the Chinese international law academics, further in-depth research should delve into the "schools of thought" in Chinese international legal academy, instead of focusing only on five "law schools". In order to understand international law as a profession and a discipline in China, it is extremely important to research on who founded it, who have developed it, and who challenge it. Such research requires joint efforts by Chinese international lawyers in self-reflection and by external observers from a comparative perspective.

Towards a Cultural Study of Chinese International Law Academics

Although in Becker Lorca's view, international lawyers should strive to become "an autonomous international legal profession" (p.1) departing from diplomatic practice and state interest, the non-western international lawyers in his historical account, who were mostly diplomats, clearly used international law to support their respective national interests. It makes sense to equate their approach to international law with

their home countries' position on international law. But such situation has undergone fundamental changes for Chinese international lawyers today.

It is true that there is a practice-oriented tradition in international legal research in China. As Roberts notices in her book, many research projects in China are funded by the government on certain topics where there is felt to be an urgent need in practice. Also, in the annual conferences of the Chinese Society of International Law, the most prestigious events are the Director-Generals (or Deputy Director-Generals) of the Departments of Treaty and Law in both the Ministry of Foreign Affairs and the Ministry of Commerce giving keynote speeches on the most important international law issues in practice and especially in diplomatic negotiations, as an update for potential topics in international legal research of the year (see here).

However, a practice-centred methodology does not necessarily lead to apologetic defenses of national interests. With the development of international law as a "cosmopolitan vocation" (Becker Lorca, p. 2), Chinese international law academics, as members of a community of international lawyers, have increasingly influenced China's practice in international law with their independent academic views. While it is absolutely necessary to look into China's perspectives on international law, China's attitudes towards international law, or how China approaches international law, as the current discourse might put it, conclusions from such behavioral study on China should not be extended to the analysis of so-called "Chinese perspectives" of Chinese international law academics.

As envisaged by Article 38 of the Statute of the International Court of Justice, it is important to draw a distinction between States' approach to international law and academic perspectives on international law reflected in "the teachings of the most highly qualified publicists of the various nations".

Besides, it inevitably leads to biased estimation if everything a Chinese international lawyer says is assumed to come from a Chinese perspective. Oftentimes the so-called "Chinese perspectives" by Chinese international law academics are merely Western (pre-/mis-)conceptions of "Chinese perspectives" on a Western reading of international law. The increasing attention on "Chinese perspectives on international law" should be abandoned, as it risks to weaken international law as a profession and divides international lawyers as a professional community. While the comparative international law discourse starts to pay attention to differences and divergences, which is a very important development in the history of international law, the first and foremost task for international lawyers is always to consolidate the "common ground" and perfect the "common language" of international law. After all, the "sufficient set of shared minimum values" defines both humanity and our self-identity, and everything in between might just be man-made errors.

How to balance such delicate situations in comparative studies? Onuma Yasuaki has provided his insights in his book *International Law in a Transcivilizational World*. When situating international law in a transcivilizational world, Onuma has wisely pointed out international law's deep cultural roots. Such profound understanding is especially true in the context of China. As Lucian Pye observes, "China is a civilization pretending to be a nation". Chinese international law academics might

not be confined by their national standpoint, but they are definitely shaped by their Chinese culture. Instead of obsessing with "Chinese perspectives on international law", the meaningful cause-and-effect study should focus on Chinese culture of international law. For example, the Chinese contributions to the Universal Declaration of Human Rights (see on this here and here), the Chinese initiatives in international environmental law (see on this here and here) and the Belt and Road Initiative, and the Chinese doctrine of peaceful co-existence in a community of shared future for mankind (see on this here and here), are all confirmations for the Chinese culture of international law which dedicate to the harmonization of international law. Chinese international law academics should be confident in their culture, and strive to integrate their unique cultural heritage into the common discourse of international law.

Conclusion

As Judge XUE Hanqin, the Vice-President of the International Court of Justice, wrote in an article published in the *Asian Journal of International Law*, we need to pursue meaningful dialogues between different cultures through a common discourse, and intellectual exchanges among legal scholars would help enhance meaningful dialogue among States. In this sense, comparative studies help reveal the ecological atlas of international law, which gives a holistic view of how different actors in international law relate to one another, how they evolve over time, and how they could be integrated in the better understanding and sustainable transformation of international law. The future of international law lies in historical and critical reflections of the current legal system and discourse, and the awareness of Chinese culture of international law is likely to contribute to building up new intersubjective comprehensibility and reconstructing the universal international legal discourse.

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